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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,249	09/08/2003	Waltherus W. Van Den Hoogenhof	5926P016	4127
8791	7590	05/11/2007		EXAMINER
BLAKELY SOKOLOFF TAYLOR & ZAFMAN				HYUN, PAUL SANG HWA
12400 WILSHIRE BOULEVARD			ART UNIT	PAPER NUMBER
SEVENTH FLOOR				1743
LOS ANGELES, CA 90025-1030				
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			05/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/658,249	VAN DEN HOOGENHOF, WALTHERUS W.
	<b>Examiner</b> Paul S. Hyun	<b>Art Unit</b> 1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 February 2007.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 08 September 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### **REMARKS**

Claims 1-9 were pending. Applicant amended claims 1, 7-9, and added new claims 10 and 11. The amendments to claim 8 have changed the scope of the claim and the claims dependent on claim 8. Specifically, claim 8 now recites a cover that is smaller than the opening of the container and freely movable relative to the container walls.

With respect to claims 1-7, the art rejections are maintained despite Applicant's arguments.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites that the sample holder is the sample container. However, claim 8 recites the step of positioning the sample container in the sample holder. It is not clear whether the sample container and the sample holder are separate entities.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-3 and 5** are rejected under 35 U.S.C. 102(b) as being anticipated by Solazzi (US 6,009,766).

Solazzi discloses a sample cup used for X-ray spectroscopy. The sample cup comprises a cavity for receiving a liquid sample and an open top adapted to be covered by a flexible polypropylene film that is not rigidly connected to the cup (see line 67, col. 3). Because the flexible film is secured only at its periphery by ring 14, surface 44 of the film is capable of moving freely relative to the walls of the sample cup (see Fig. 2C).

**Claims 1 and 6** are rejected under 35 U.S.C. 102(b) as being anticipated by Solazzi (US 4,409,854).

Solazzi discloses a sample cup used for X-ray spectroscopy. The cup 18 comprises a cavity for receiving a liquid sample and an open top adapted to be covered by a cap 35 that is wedged into the opening of cup 18.

**Claims 1 and 4** are rejected under 35 U.S.C. 102(b) as being anticipated by Fildes (US 4,001,389).

Fildes discloses a test tube that is covered by a foil (see line 39, col. 7).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Solazzi (US 6,009,766).

Although Solazzi does not explicitly disclose an X-ray spectrometer, the reference does disclose that the sample cup is intended for X-ray spectroscopy. Therefore, it would have been obvious to one of ordinary skill in the art to provide an X-ray spectrometer so that the contents of the cup can be analyzed.

Claims 1 and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Solazzi (US 6,009,766) in view of Nelson (US 3,861,555).

Solazzi discloses a sample cup used for X-ray spectroscopy. The sample cup comprises a cavity for receiving a liquid sample and an open top adapted to be covered by a flexible polypropylene film that is not rigidly connected to the cup (see line 67, col. 3). The cup disclosed by Solazzi differs from the claimed invention in that Solazzi does not disclose a cover that is smaller than the opening of the sample container and

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capable of freely moving relative to the container walls. Solazzi also does not disclose a method for conducting X-ray spectroscopy.

With respect to the cover, Nelson discloses that floating covers are well known in the art (see lines 1-10, col. 1). Nelson discloses, "It is common practice to provide tanks containing volatile liquids with internal floating covers that rise and fall in the tanks in accordance with the depth of the liquid therein. These covers reduce or eliminate the air space above the liquid and thereby control evaporation which otherwise would cause loss of a considerable amount of the liquid..." In light of the disclosure of Nelson, it would have been obvious to one of ordinary skill in the art to provide the cup disclosed by Solazzi with a floating cover when storing highly volatile liquids. Although the cover disclosed by Nelson is not directed towards containers used for X-ray spectroscopy, one of ordinary skill in the art would recognize and apply Nelson's disclosure to any liquid storage means.

With respect to the method of conducting X-ray spectroscopy, Solazzi discloses that the sample cup is intended for X-ray spectroscopy. Therefore, it would have been obvious to one of ordinary skill in the art to conduct X-ray analysis of the contents of the cup disclosed by Solazzi.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-7 have been fully considered but they are not persuasive. Applicant's arguments are based on the premise that the cover of the claimed invention is in contact with the liquid. However, arguments based on this premise is not persuasive for the following reasons:

1) The claims recite a cover that is to be arranged on a free surface of the liquid sample contained in a container. This limitation recites an intended use of the cover, which is not patentably significant.

2) The claims do not recite that the liquid sample is part of the claimed sample container. Structure of a claimed invention defined with respect to something that is not part of the claimed invention (i.e. the liquid sample) is vague. Therefore, the claim can be interpreted as broad as possible within reason. In this case, if the container was completely filled with the sample liquid, then any cover placed on the top of the container will be arranged on top of the free surface of the liquid.

Applicant's arguments with respect to claims 8-11 have been considered but are moot in view of the new grounds of rejection. The amendments changed the scope of the claims and necessitated new grounds of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul S. Hyun whose telephone number is (571)-272-8559. The examiner can normally be reached on Monday-Friday 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PSH  
5/4/07

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700